

1 RAOUL D. KENNEDY (STATE BAR NO. 40892)
Raoul.Kennedy@skadden.com
2 RICHARD S. HORVATH, JR. (STATE BAR NO. 254681)
Richard.Horvath@skadden.com
3 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue, Suite 1100
4 Palo Alto, California 94301
Telephone: (650) 470-4500
5 Facsimile: (650) 470-4570

6 PAUL M. ECKLES (STATE BAR NO. 181156)
Paul.Eckles@skadden.com
7 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
4 Times Square
8 New York, New York 10036
Telephone: (212) 735-3000
9 Facsimile: (212) 735-2000

10 Attorneys for Specially Appearing Defendant
HARPERCOLLINS PUBLISHERS L.L.C.

11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

14 ANTHONY PETRU and MARCUS MATHIS,
Individually and on Behalf of All Others Similarly
15 Situated,

16 Plaintiffs,

17 vs.

18 APPLE INC.; HACHETTE BOOK GROUP, INC.;
HARPERCOLLINS PUBLISHERS, INC.;
19 MACMILLAN PUBLISHERS, INC.; PENGUIN
GROUP (USA) INC.; and SIMON & SCHUSTER,
INC.,

20 Defendants.

CASE NO. 3:11-CV-03892-EMC

21 CHAD MILLER and GRACE HOKE, Individually
and on Behalf of All Others Similarly Situated,

22 Plaintiffs,

23 vs.

24 HACHETTE BOOK GROUP, INC.; HARPER
COLLINS PUBLISHERS, INC.; MACMILLAN
25 PUBLISHERS, INC.; PENGUIN GROUP (USA)
INC.; SIMON & SCHUSTER, INC., and APPLE
26 INC.

27 Defendants.
28

CASE NO. 3:11-cv-05019-SC

**(1) ADMINISTRATIVE MOTION
TO RELATE CASES;**

**(2) DECLARATION OF RICHARD
S. HORVATH, JR. IN SUPPORT OF
THE ADMINISTRATIVE MOTION
TO RELATE CASES [filed under
separate cover];**

**(3) [PROPOSED] ORDER
GRANTING ADMINISTRATIVE
MOTION TO RELATE CASES [filed
under separate cover]**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that specially appearing defendant HarperCollins Publishers L.L.C. (incorrectly sued as “HarperCollins Publishers, Inc.”) submits this Administrative Motion to Relate Cases pursuant to Civil Local Rules 3-12 and 7-11 to relate *Miller, et. al. v. Hachette Group Book Inc., et al.* (11-cv-05019 N.D. Cal.) (the “*Miller Action*”) to the previously filed action captioned *Petru, et al. v. Apple, Inc., et al.* (11-cv-3892 N.D. Cal.) (the “*Petru Action*”) and to request that the *Miller Action* be assigned to the Honorable Edward M. Chen for all purposes.

This Administrative Motion will be based on this notice, the administrative motion, the accompanying memorandum of points and authorities and all other matters properly considered by the Court.

DATED: November 18, 2011

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: /s/ Raoul D. Kennedy
RAOUL D. KENNEDY

525 University Ave., Suite 1100
Palo Alto, California 94301
Telephone: (650) 470-4500
Facsimile: (650) 470-4570

Attorneys for Specially Appearing Defendant
HARPERCOLLINS PUBLISHERS L.L.C.

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Civil Local Rules 3-12 and 7-11, specially appearing defendant HarperCollins Publishers L.L.C. (incorrectly sued as “Harper Collins Publishers, Inc.”) submits this administrative motion to relate the above captioned actions. The Honorable Edward M. Chen has already ordered that the following actions be administratively related to the action captioned *Petru, et al. v. Apple, Inc., et al.* (11-cv-3892 N.D. Cal.) (the “*Petru* Action”) and assigned to his court: *Diamond v. Apple, Inc., et al.* (11-cv-3954 N.D. Cal.); *Gilstrap, et. al. v. Apple, Inc., et al.* (11-cv-4035 N.D. Cal.); *Albeck v. Apple, Inc., et al.* (11-cv-4110 N.D. Cal.); *Ruane-Gonzales v. Apple, Inc., et al.* (11-cv-4500 N.D. Cal.); *Key v. Apple, Inc., et al.* (11-cv-04754 N.D. Cal.); *Rivers v. McMillan, et. al.* (11-cv-05080 N.D. Cal.), *Rossman, et al. v. Apple, Inc., et al.* (11-cv-04191 N. D. Cal.), and *Ulbee v. Apple, Inc., et al.* (11-cv-4490 N.D. Cal.) (collectively, “Related Actions”). In this Administrative Motion, HarperCollins requests that the Court complete this administrative process and relate this action, captioned *Miller, et. al. v. Hachette Group Book Inc., et al.* (Case No. 3:11-cv-05019-SC N.D. Cal.) (the “*Miller* Action”), to the *Petru* Action.¹ In addition, HarperCollins requests that the *Miller* Action be transferred and assigned to the Honorable Edward M. Chen for all purposes.

To be related, this action must “concern substantially the same parties, property, transaction or event” as the *Petru* Action. Civ. Local Rule 3-12(a). Both the *Miller* Action and the *Petru* Action involve the same or similar subject matter and substantially all the same parties. Both of these cases involve an antitrust class action against six defendants relating to the unilateral and independent decisions by five of the major publishing houses, in connection with Apple’s launch of its iBookstore and its iPad device, to begin selling their eBooks pursuant to an agency relationship. In both cases, plaintiffs allege that the publishing houses purportedly violated the antitrust and unfair competition laws by switching to a new standard distribution model for eBooks. While there

¹ On November 3, 2011, Plaintiffs Chad Miller and Grace Hoke (“Plaintiffs”) filed in the *Miller* Action an Administrative Motion To Consider Whether Cases Should Be Related (“Plaintiffs’ Motion”). On November 4, the Court apparently notified Plaintiffs’ counsel that Plaintiffs’ Motion needed to be re-filed in the *Petru* Action. Because Plaintiffs’ Motion has not been re-filed in the *Petru* Action, HarperCollins has chosen to file this Administrative Motion.

1 are some differences between the allegations in the *Petru* Action and the *Miller* Action, each case
2 involves the same core group of defendants and the alleged same conduct.

3 It further appears likely that “there will be an unduly burdensome duplication of labor and
4 expense or conflicting results” if the *Miller* Action were conducted before a different judge than
5 the Related Actions. Civ. Local Rule 3-12(a). While the Related Actions are pending or would
6 proceed before the Honorable Edward M. Chen in this Court, the *Miller* Action is assigned
7 currently to a different judge, the Honorable Samuel Conti. HarperCollins therefore submits that
8 the interests of judicial efficiency would be served by assigning the *Miller* Action to the Honorable
9 Edward M. Chen for all purposes.

10 Finally, as reflected by the accompanied Declaration of Richard S. Horvath, Jr. and
11 Plaintiffs’ Motion, the parties in the *Miller* Action do not to oppose this Administrative Motion.

12 DATED: November 18, 2011

13 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

14
15 By: /s/ Raoul D. Kennedy
16 RAOUL D. KENNEDY

17 525 University Ave., Suite 1100
18 Palo Alto, California 94301
19 Telephone: (650) 470-4500
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